perience as a figment of the appellant's own imagination. The medical evidence as well as the report from the Boys' Home showed that the appellant had injured himself when he fell whilst playing with some other inmates. There was no injury on the back of his head or on his neck.

We would also note that the appellant never raised this incident, and indeed the appellant was uncooperative with even Dr. Wong until after Dr. Wong apprised him of the possibility of a defence of diminished responsibility. This we feel places grave doubt on the defence raised.

For all the above reasons, we dismissed the appellant's appeal.

Appeal dismissed.

Solicitors: *Loh Lin Kok.*

RE J.B. JEYARETNAM, AN ADVOCATE AND SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Chua J. & Chan Sek Keong J.C.) January 12, 1988]

[Singapore – Originating Summons No. 673 of 1987]

Legal Profession – Show cause proceedings – Striking off the roll of advocates and solicitors – Whether exceptional circumstances present – Whether convictions imply a defect of character – Whether capacity in which solicitor acted a criterion for striking-off action – Legal Profession Act (Cap. 161), ss. 80 & 95.

In this case, disciplinary proceedings were taken by the Law Society against the respondent, who was an advocate and solicitor, on the recommendation of the Disciplinary Committee. The respondent was previously convicted of four offences against the Penal Code. Three of the offences were for the fraudulent removal of property and the fourth was for making a false declaration. As a result, the respondend was asked to show cause as to why he should not be struck off the roll of advocates and solicitors.

The respondent raised a preliminary objection that in the circumstances of this case, the Chief Justice should not be one of the three judges. As regards the main show cause action, the respondent contended that there were exceptional circumstances which justified the court to go behind the convictions of the respondent.

Held: (1) section 95(6) which provided that the Chief Justice shall be one of the judges is mandatory;

(2) whether exceptional circumstances exist is a question solely to be determined on the circumstances of each particular case. It is not enough merely to show that no appeal against conviction was available since lack of a right to appear *per se* does not constitute exceptional circumstances justifying re-opening a conviction in the course of disciplinary proceedings;

(3) there were no exceptional circumstances as regards all or any of the four convictions to justify any inquiry into the correctness of the convictions. The convictions therefore stand proved against the respondent for the purposes of section 80(2)(a) of the Legal Profession Act;

(4) in the present case, the offences were clearly of a very serious nature and they involved fraud and falsehood. Each one of the four criminal convictions clearly implied a defect of character making the respondent unfit for the profession within the meaning of section 80(2)(a);

(5) the respondent was ordered to be struck off the roll of advocates and solicitors.

Cases referred to:

(1) *Issac Paul Ratnam* v. *Law Society of Singapore* [1976] 1 M.L.J. 195.
(2) *In Re Weare, A Solicitor* [1893] 2 Q.B. 439.

ORIGINATING SUMMONS.

J. B. Jeyaretnam in person.
Goh Joon Seng for the Law Society.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): In these proceedings the respondent is J.B. Jeyaretnam, an advocate and solicitor of the Supreme Court, Singapore. These proceedings arose from the respondent's convictions of four offences under the Penal Code. The events leading to the prosecution of the respondent are matters largely beyond dispute: they are set out in the various judgments delivered in the course of those criminal proceedings. They are now part of the record before us – see District Court's judgment dated March 30, 1984; Chief Justice's judgment dated April 18, 1985 [see [1986] 1 M.L.J. 133]; District Court's judgment dated April 8, 1986; Lai Kew Chai J.'s judgment dated November 10, 1986. For present purposes, it is only necessary to set out, in chronological order, the charges and convictions which give rise to the present show cause proceedings.

On January 14, 1984, the respondent was tried and convicted by the District Court on a charge

under section 421 Penal Code for fraudulently transferring a sum of $400 belonging to the Workers' Party (a political party of which the respondent was and still is the secretary general) knowing it to be likely that it would prevent the distribution of that property amongst the creditors of the Workers' Party. He was fined $1,000. His appeal against conviction and sentence was dismissed by the High Court on April 18, 1985 ("the first conviction") [see [1986] 1 M.L.J. 133].

On April 18, 1985, following an appeal by the Public Prosecutor against the acquittal by the District Court, he was convicted by the Chief Justice in the High Court in the exercise of its appellate jurisdiction on two similar charges under section 421 Penal Code (fraudulent transfer of property to prevent its distribution amongst creditors) in respect of two other sums of money, *i.e.* $2,000 and $200. He was fined $1,000 in respect of each charge ("the second and third convictions").

It is to be observed that in respect of all these three convictions, he sought leave from the High Court to reserve certain questions of law of public interest to the Court of Criminal Appeal under section 60 Supreme Court of Judicature Act. His application was refused by the High Court – see Chief Justice's judgment dated June 21, 1985. His appeal against that refusal was also dismissed – see Court of Criminal Appeal's judgment dated October 9, 1985 [see [1986] 1 M.L.J. 453]. On March 6, 1986, the Privy Council refused special leave to appeal.

On September 25, 1985, he was convicted by the District Court – following a retrial ordered by the Chief Justice on April 18, 1985 [see [1986] 1 M.L.J. 133] – of a charge under section 199 Penal Code of making a false declaration before a Commissioner for Oaths, a declaration which was by law receivable as evidence. He was sentenced to three months' imprisonment. His appeal against conviction was dismissed by the High Court on November 10, 1986, but the sentence was varied to one month's imprisonment and a fine of $5,000 ("the fourth conviction"). In respect of this conviction, he again sought leave to refer certain questions of law of public interest to the Court of Criminal Appeal under section 60 Supreme Court of Judicature Act. That application was refused and his appeal against that refusal was dismissed – see Court of Criminal Appeal's judgment dated April 28, 1987. On July 29, 1987, the Privy Council refused special leave to appeal.

Section 80(1) of the Legal Profession Act (Cap. 161, 1985 Ed.) empowers the Supreme Court on due cause shown to strike off the roll or suspend or censure an advocate and solicitor of the Supreme Court. Section 80(2), so far as material, provides:

> "(2) Such due cause may be shown by proof that an advocate and solicitor
>
> (a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;"

In compliance with the provisions of the Legal Profession Act, a Disciplinary Committee was appointed to hear and investigate whether or not the respondent's four convictions constituted cause of sufficient gravity for disciplinary action under section 80.

The Disciplinary Committee sat on March 19 and 20, 1987 and delivered its report dated April 13, 1987. It recorded its findings and determined that cause of sufficient gravity for disciplinary action existed under section 80. It concluded as follows:

> *"DETERMINATION*
>
> On the evidence put before this committee by the Law Society and by the respondent and upon considering the said evidence and the submissions made by counsel for the Law Society and by the respondent, the committee had no hesitation in coming to the conclusion that the respondent had been convicted of criminal offences implying a defect of character which makes him unfit for his profession within the meaning of section 84(2)(a) of the Legal Profession Act (Cap. 217, 1970 Ed.). Accordingly the committee determines that cause of sufficient gravity for disciplinary action exists under section 84 of the Legal Profession Act (Cap. 217, 1970 Ed.)."

Proceedings were duly taken out by the Law Society under section 95, and the matter came before this court on October 19, 1987. At the conclusion of the hearing, we ordered that the respondent be struck off the roll of advocates and solicitors. We now give our reasons.

It is convenient, at this stage, to deal with a preliminary objection by the respondent, namely, that in the circumstances of this case, the Chief Justice ought not to be one of the three judges of this court since it was the Chief Justice who, in the High Court, set aside the acquittal of the District Court and convicted the respondent in two of the three charges under section 421. That, it was said, would not be "proper", since this court was now asked to go behind the convictions. No

suggestion was, however, advanced that there was any likelihood of bias or prejudice to the respondent by the Chief Justice being one of the three judges. We rejected that objection. Section 95(6) which, insofar as material, provides that "the showing of cause ... shall be heard by a court of three judges of whom the Chief Justice shall be one ..." is, in our judgment, mandatory.

The first submission of the respondent was that there are exceptional circumstances in the present case which justify us going behind the four criminal convictions. The respondent relied on a passage in the judgment of the Privy Council in *Issac Paul Ratnam* v. *Law Society of Singapore*[1]. Their Lordships there were dealing with the issue whether in disciplinary proceedings under the Legal Profession Act, it was open, for the purposes of section 80(2)(a), to go behind the conviction and enquire whether it was correctly made. Their Lordships' observations on this point are as follows (at pp. 200 to 201):

"The High Court assumed that it was open to them to go behind the conviction; though, having done so, they held that the appellant was rightly convicted. It is, strictly, unnecessary for their Lordships to express an opinion on this point; in view of the procedural irregularity (which was not known to the High Court) the relevance of the conviction was not to section 84(2)(a) but to section 84(2)(b) (improper conduct). But, since the matter was fully argued before their Lordships, they think it proper to state that they agree with the view of the High Court. They would, however, add this rider. *Although it is open to go behind the conviction this would only be justified in exceptional circumstances.* Their Lordships will not attempt to lay down what circumstances should be considered so exceptional as to permit the question whether the accused had been rightly convicted to be raised, beyond saying that an important consideration would be whether an appeal against the conviction had been available. For example, if a plea of guilty had been made under a misunderstanding, and there was no opportunity of rectifying it on appeal, justice would demand that the conviction should not be conclusive against the accused in the course of disciplinary proceedings, the object of which themselves is, after all, to promote justice." (the italics is ours)

As the Privy Council observed, the object of disciplinary proceedings is to promote justice and it is only exceptional circumstances that would justify the court going behind a criminal conviction.

Whether such exceptional circumstances exist is a question solely to be determined on the circumstances of each particular case. It is, however, apparent from the passage cited above that it is not enough merely to show that no appeal against conviction was available since lack of a right of appeal *per se* does not constitute exceptional circumstances justifying re-opening a conviction in the course of disciplinary proceedings. This is clear from the example given by the Privy Council.

The second and third convictions

Do exceptional circumstances exist? The respondent relied strongly on the fact that, as regards these two convictions, he had had no opportunity to appeal. It is to be observed (1) that the High Court in the exercise of its appellate jurisdiction set aside the acquittal by the District Court, and substituted in their places, these two convictions, and (2) that under our system of criminal justice in operation for many decades, the High Court is, effectively, the final court of appeal in criminal appeals from the inferior courts – see the combined effect of section 247 Criminal Procedure Code and sections 19(a) and 44(5) Supreme Court of Judicature Act.

In his submissions on these two convictions, the respondent, beyond observing that there was no available appeal as regards these convictions, put forward no argument or special circumstances, save that upon direct questions put by the court, he could only reply that he would like to "go through the facts", and that he had "additional evidence" the nature of which was never disclosed. In these circumstances, we were of the opinion that the respondent had failed to show that these two convictions were wrong or could have been wrong and should be open to legitimate inquiry by this court. In any event, on all material before us we were satisfied that the respondent had been properly tried and convicted according to law. Accordingly, we were of the opinion that no exceptional circumstances have been shown to justify this court going behind these two convictions.

The first conviction

The respondent was convicted by the District Court following a full trial. He appealed to the High Court against that conviction. His appeal was dismissed. He has had, so to speak, "his day in court", in the sense of a full trial before the District Court and a full hearing on appeal. Moreover, nothing was forthcoming from the respondent as to what were the "exceptional circumstances" which could justify us in going behind it.

The fourth conviction

The same can also be said for the fourth conviction. As regards this conviction, the respondent underwent a fresh trial in District Court – as ordered by the High Court on April 18, 1984. At the end of the prosecution case, when a *prima facie* case was found to have been made out which, if unrebutted, would have warranted his conviction, he elected – as he was entitled to do – to remain silent and adduced no evidence. He was convicted. He appealed to the High Court against the conviction and his appeal was dismissed. Again, no exceptional circumstances were advanced by the respondent as to why this court should now go behind the conviction.

The onus throughout being on the respondent to show "exceptional circumstances", we could see nothing in his submissions to lead us to the conclusion that there were exceptional circumstances as regards all or any of the four convictions to justify us in enquiring into the correctness of the convictions. In our judgment, the convictions therefore stand proved against the respondent for the purposes of section 80(2)(a) Legal Profession Act.

The second issue that fell for decision concerns the second limb of section 80(2)(a), namely, whether the offence(s) is one which implies a defect of character making him unfit for his profession. The respondent contended that they did not so make him unfit. In disposing of this contention, we find it helpful to refer to another observation of the Privy Council in *Issac Paul Ratnam's* case[1] (at p. 201) dealing with the proper construction of this limb of section 80(2)(a). It is as follows:

"The appellant had argued before the High Court that, on the facts and having regard to all the circumstances, his conviction could not be said to imply a defect of character making him unfit for his profession within section 82(2)(a) of the Legal Profession Act. *The High Court held that the nature of the offence is the sole criterion in determining whether or not an advocate and solicitor comes within the provisions and that the offence in question was one which clearly implied such a defect of character in the appellant.* This construction of the statutory provision by the High Court, and the conclusion therefrom, were barely controverted before their Lordships. On the view which their Lordships have taken, the appellant's conviction (or, more importantly, the admitted conduct which led to such conviction) was relevant under the circumstances to section 84(2)(b) rather than (a). But, *did the matter fall for necessary decision, their Lordships would be in no way disposed to disagree with the construction adopted by the High Court.* Of course, the mere 'nature' of the offence will often be of little guidance to the moral obliquity actually involved. But it is in the penalty that the court will have regard to the moral obliquity." (the italics is ours)

In the present case, the respondent was convicted of the offences of fraudulent transfer of property to defraud creditors under section 421 Penal Code and of making a false declaration receivable as evidence under section 199 Penal Code. The latter offence carries with it the same punishment as giving false evidence under section 191 Penal Code, namely, perjury under English law. These are clearly offences of a very serious nature, when committed by anyone. They involve fraud and falsehood. As the judgments of the courts which dealt with those four offences show, there were express findings of fraudulent intent for the offences under section 421 and knowledge of falsehood for the offence under section 199. Accordingly, we were in no doubt that each one of the four criminal convictions clearly implied a defect of character making the respondent unfit for the profession within the meaning of section 80(2)(a).

It was argued by the respondent who appeared in person before us that the offences were committed by him not in his capacity as a solicitor but in his capacity as the secretary-general of a political party. Had the argument been advanced with any degree of confidence, the leading English Court of Appeal case of *In Re Weare, A Solicitor,*[2] dealing with a conviction of a solicitor for the offence of allowing his house to be used as a brothel would have stood as persuasive authority against that contention. As Lord Esher M.R. put it (at p. 445):

"All these cases seem to me to show that it is not necessary that the offence, at all events, if it be a criminal offence, should be committed by the offending party in his character as an attorney; the question is whether it is such an offence as makes it unfit that he should remain a member of this strictly honourable profession. Where a man has been convicted of a criminal offence, that *prima facie* at all events does make him a person unfit to be a member of the honourable profession. That must not be carried to a length of saying that wherever a solicitor has been convicted of a criminal offence the court is bound to strike him off the roll."

As Sir Thomas Lund said, in relation to England, in *A Guide to the Professional Conduct and Etiquette of Solicitors* (1960):

"... no question can arise where a solicitor is convicted, whether or not in his capacity as a solicitor, of any offence involving intentional dishonesty or actual fraud ... Those are obviously all cases where on conviction striking off would follow automatically ... Perjury and the wilful

making of false statements by solicitors fall within the same category of offence."

Finally, there remains the question of the appropriate penalty to be imposed on the respondent in the circumstances of this case. In determining the penalty, we ought to have regard to the "moral obliquity" actually involved – see the Privy Council's dictum at the foot of the passage cited above. We have already stated that the offences for which the respondent was convicted are offences involving fraud and falsehood. The respondent argued that the facts and circumstances of his convictions showed that he was not guilty of "moral turpitude" and that it was an "error of judgment" on his part.

In his judgment dated April 18, 1985, the Chief Justice, who dealt with the fraudulent transfer charges under section 421, stated in relation to the $2,000 cheque that "in all the circumstances, the inference clearly arises that by (his) acts (the respondent) intended to place the proceeds of the cheque, when cashed, out of the reach of the creditors of the Worker's Party ... in circumstances which constitute an intent to defraud." Lai Kew Chai J., when passing sentence on the false declaration charge under section 199, said in his judgment dated November 10, 1986 that "(his) mental malignity was further evidenced by the fact that (he was) deliberately and wilfully thwarting a judgment creditor of (his) party". Accordingly, we were of the opinion that this submission was wholly devoid of merit.

For all these reasons, we were of the view that any one of the four criminal convictions, standing by itself, is sufficient to make the respondent unfit to remain as a member of this honourable profession and we ordered that he be struck off the roll of advocates and solicitors. We also ordered that the respondent bear the costs of these proceedings, such costs, at the suggestion of counsel for the Law Society, to be for disbursements only.

We further ordered, on the application of the respondent for a stay pending appeal, that there be no stay of our order pending appeal, since, in our view, it would be a contradiction in terms to allow the respondent to remain on the roll having regard to our view that his convictions made him unfit for his profession.

Order accordingly.

Solicitors: *J.B. Jeyaratnam & Co.*

VERNES ASIA LTD. v. TRENDALE INVESTMENT PTE. LTD. & ANOR.

[O.C.J. (Grimberg J.C.) January 12, 1988]

[Singapore – Originating Summons No. 1274 of 1986]

Contract – Loan and mortgage – Whether plaintiff illegal moneylender – Whether unlawfully conducting banking business – Whether conducting business in Singapore – Meaning of "banking business" – Nature of plaintiff's business – Banking Act, ss. 2 & 4 – Moneylenders Act, s. 5(1) & (2).

Banking – "Banking business" – Meaning of – Whether plaintiff doing banking business illegally – Banking Act, ss. 2 & 4.

Moneylenders – Whether plaintiff an illegal moneylender – Moneylenders Act, s. 5(1) & (2).

The plaintiff was a deposit-taking company incorporated in Hong Kong. It has no office or place of business in Singapore. The first defendant was a property developer.

The plaintiff made a loan to the first defendant for the first defendant to purchase certain property. The loan was also secured by a mortgage over the property. The first defendant defaulted in the payment of the loan. Meanwhile, the first defendant had let the property to the second defendant without the plaintiff's knowledge.

The plaintiff brought the present action to claim the sum owed with interest and also claimed vacant possession of the premises from the second defendant. The defendants contended firstly that the plaintiff was an illegal moneylender and secondly that it was unlawfully carrying on the business of banking in Singapore.

Held: (1) although the agreement was negotiated in Singapore, the first defendant's account was opened, and maintained, in Hong Kong and in the absence of evidence to the contrary, it must be inferred that the loan was funded from Hong Kong. The mere fact that the loan was secured by a Singapore registered mortgage cannot result in the plaintiff being said to have carried on business in Singapore;

(2) "banking business" in section 2 of the Banking Act means that a company can only be said to be conducting banking business if it performs all of the functions of receiving money on current or deposit account; paying and collecting cheques; making advances; and such other business as may be prescribed by the Monetary Authority of Singapore for the purposes of the Act. The legislature did not intend the definition of "banking business" in the Banking Act to be construed disjunctively so that the making of advances to customers alone amounts to the conduct of banking business. Therefore, the plaintiff was not conducting banking business in Singapore;

(3) the sum owed by the first defendant should be paid to the plaintiff. In the event of default, the mortgage over the property should be enforced by foreclosure or sale and the first and second defendants should deliver up the possession of the property.

Cases referred to:

(1) *The London Finance and Discount Company Limited* v. *Robert J. Butler and Mary Butler* [1929] Ir. R. 90.